

DA 95-47

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March 15, 1990

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: DA 89-1060

Dear Ms. Searcy:

Enclosed on behalf of A. C. Nielsen Company are an original and four copies of a Request for Permissive Authority for filing in connection with the above-referenced matter.

Any questions regarding this matter may be referred to the undersigned.

Sincerely,


Grier C. Raclin

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:)	
)	
Request Of A.C. Nielsen Co.)	
for Permissive Use of Line)	DA 89-1060
22 of the Active Portion of)	
the Television Video Signal)	

To: Chief, Mass Media Bureau

REQUEST FOR PERMISSIVE AUTHORITY

A.C. Nielsen Company ("Nielsen"), by its attorneys, hereby requests that the Commission grant to television station licensees on a permanent basis general authority to transmit Nielsen's Automated Measurement of Lineup ("AMOL") Signal Identification ("SID") codes on line 22 of the active video signal broadcast by those licensees. In support of this Request, Nielsen states as follows:

1. This matter has been pending with the Commission since July 19, 1989, when Nielsen filed its original request for Permissive Authority to allow broadcast licensees to transmit Nielsen's SID codes on line 22 of program and commercial material broadcast by the licensees. See Letter dated July 19, 1989 from Grier C. Raclin, Esq., Counsel to Nielsen, to Alex D. Felker,

Chief, Mass Media Bureau. The authority Nielsen sought and still seeks is identical to the authority to use line 22 that had been issued previously by the Commission to numerous other parties, including competitors of Nielsen, such as Airtrax and VidCode, Inc. See Nielsen's "Reply Comments," filed in this proceeding on October 2, 1989, at 2-4.

2. On September 1, 1989, after the submission of numerous pleadings and letters by interested parties, and after various meetings between the Commission staff and representatives of Nielsen and Airtrax, the Commission issued a Public Notice in which it stated its belief that "it should grant approval for television licensees to use line 22 to transmit Nielsen's AMOL system," Public Notice at 1, but requested further comment on Nielsen's request. Public Notice, FCC DA 89-1060, released September 1, 1989. On November 22, 1989, after an exhaustive review of the comments filed in response to the Public Notice, the Commission granted Nielsen's Request and authorized the "general use of Nielsen's AMOL system on line 22 by licensees in the television services." Letter to Grier C. Raclin from Roy J. Stewart, dated November 22, 1989 ("Temporary Authority") at 5. The Commission determined in its Temporary Authority that each of the criteria required to grant Nielsen's request had, in fact,

been satisfied,^{1/} but granted the Temporary Authority to allow yet a further "evaluation" of the "compatibility" of Nielsen's use of the line with similar uses by other authorized parties. Id. at 4.^{2/} The Commission stated in this regard that, "[s]hould experience during this [temporary] period confirm the feasibility of Nielsen's use, permanent authority may then be granted." Id.^{3/}

^{1/} The Commission based its conclusions on its specific findings that:

- (1) Nielsen's AMOL/SID transmissions constitute "special signals" that are integral parts of their associated programming material;
- (2) the effects of transmitting the AMOL codes will be no worse than those of previously authorized line 22 uses and will not visibly degrade the picture presented to viewers;
- (3) Nielsen had justified its proposed use of line 22;
- (4) television licensees would benefit from the transmission of AMOL codes on line 22; and
- (5) temporary approval for use of Nielsen's AMOL system on line 22 would be in the public interest.

Permissive Authority at 2-4.

^{2/} Additionally, in light of the claims and contentions presented by Airtrax and VidCode that they would be driven out of business were Nielsen to receive authority to use line 22, the Commission reserved the right to withdraw the temporary authority if it appeared that other authorized users "were being adversely affected" by the use of the line to transmit AMOL codes during the temporary authorization period. Temporary Authority at 5. No such effect occurred during the Temporary Authority period. See text infra at Paras. 4-5.

^{3/} On December 20, 1989, Airtrax undertook yet another anticompetitive effort further to delay and inhibit the use of line 22 to transmit Nielsen's AMOL codes, by filing an "Application for Review" and "Motion for Stay" of the

4. Pursuant to the Temporary Authority, Nielsen, Paramount Pictures, Inc., and numerous broadcast licensees around the country tested the use of line 22 to transmit Nielsen's AMOL codes. The tests were undertaken to confirm the conclusions set forth in the Commission's Temporary Authority, and specifically to confirm, in circumstances as similar as possible to a commercial setting, the feasibility of using line 22 to transmit Nielsen's AMOL codes without adversely affecting other authorized uses of the line. During the tests, Paramount encoded a selection of its programs with Nielsen's SID codes and transmitted those encoded programs in the normal course of its business to independent television licensees; the licensees broadcast the encoded programs in the normal course of their business;^{4/} and Nielsen decoded and recorded the broadcast of these codes to confirm the broadcast and the reliability of the system as it would in a commercial setting.^{5/} The test spanned a two-week period and involved the encoding of programs that were

Commission's Temporary Authority. Nielsen timely filed an "Preliminary Opposition" to Airtrax's Motion on December 27, 1989 and a "Supplemental Opposition" to Airtrax's Motion on January 17, 1990, and filed an Opposition to Airtrax's Application on January 19, 1990. Those matters are still pending before the Commission.

^{4/}No special equipment was required to be used by the licensees to broadcast these codes.

^{5/}See Nielsen "Comments" in this proceeding at 6-12 for a description of the methodology Nielsen uses to prepare ratings based upon AMOL code transmissions.

broadcast six days per week concurrently in up to 190 television markets. During the tests, licensees were fully informed of the presence of the AMOL Codes in Paramount's programming.

5. The tests have confirmed in all respects Nielsen's position in this proceeding, and the Commission's related conclusions set forth in the Temporary Authorization. The tests established, inter alia, that utilization of line 22 provides more reliable syndicated programming line-up information than Nielsen had been able to produce previously through the use of line 20 (see Nielsen's "Comments" in this proceeding at pages 9-12) and that use of the line did not degrade television service. See Temporary Authority at 3, 4. Moreover, Nielsen is not aware of even a single complaint being made to the Commission or elsewhere during the Temporary Authority period that other authorized users of line 22 have been adversely affected by the use of that line to transmit Nielsen's AMOL codes. In sum, the tests have established that the issuance to Nielsen of the same Permissive Authority that has been issued to its competitors is fully warranted and in the public interest.

6. In light of the successful completion of the tests authorized during the Temporary Authority period (which merely confirmed tentative conclusions that the Commission already had reached in the Public Notice and Temporary Authority), Nielsen herein requests that permanent authority be granted to broadcast

licensees to use line 22 to transmit Nielsen's AMOL codes. Specifically, Nielsen herein requests that broadcast licensees be issued the same general authority to transmit SID codes on line 22 as has been issued to other authorized users of line 22, including Airtrax and Vidcode. In light of the extensive delays that have already, and uniquely, been incurred by Nielsen in its efforts to obtain the same authority that has been granted to its competitors, Nielsen requests that the Commission review and grant this request as expeditiously as possible.

Respectfully submitted,

A.C. NIELSEN COMPANY

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Its Attorneys

Dated: March 15, 1990

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DECLARATION

I, David H. Harkness, do hereby declare and state as follows:

1. I am Senior Vice President, Director of Marketing, for A.C. Nielsen Company.
2. The factual statements in the foregoing Request for Permissive Authority are true and correct to the best of my knowledge, information and belief.



David H. Harkness

Dated: March 14, 1990

Certificate of Service

I, Kimberly Smith, a secretary in the law firm of Gardner, Carton & Douglas, hereby certify that the foregoing Request of A. C. Nielsen Company for Permissive Authority was served this fifteenth day of March, 1990, by hand or by first-class mail, postage prepaid, on the following:

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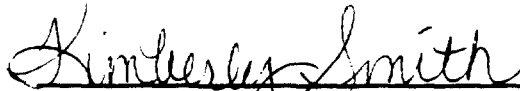
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